

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

----- X  
TODD BIGELOW,

Plaintiff,

- against -

TOM GARRETT and TOM GARRETT FOR  
CONGRESS,

Defendants.  
-----X

17 Civ. \_\_\_\_ ( )

JURY DEMANDED

COMPLAINT FOR WILFUL COPYRIGHT INFRINGEMENT

Defendant Tom Garrett is an anti-immigrant pro-Trump politician who ran for Congress last year by helping himself to – and essentially making his campaign trademark -- an iconic photograph that was never intended (and never authorized) to serve such deplorable purposes. That photo (“the Photo”) was created (in 1994) and is owned by plaintiff Todd Bigelow, an internationally-acclaimed photojournalist. Because of its iconic status and reputation, the Photo has become closely associated with Mr. Bigelow. By their wholesale appropriation of the Photo, and their utterly false implication that Mr. Bigelow authorized that wholesale appropriation for purposes that are anathema to him, the defendants not only wilfully infringed the registered copyright in the Photo but in so doing seriously damaged Mr. Bigelow’s reputation and standing in his relevant communities. This action is brought to address and vindicate Mr. Bigelow’s legal rights in this connection.

THE PARTIES

1. Plaintiff Todd Bigelow (“Bigelow”) is a resident of California and a professional photographer and journalist for almost three decades. His work has appeared in such publications as TIME, Sports Illustrated, Public Radio International, National Geographic Traveler, Smithsonian, Newsweek, ESPN.com, Der Spiegel (Europe's leading news weekly), People, AARP and the Chronicle of Higher Education. He contributed to two Breaking News Pulitzer Prizes awarded to the Los Angeles Times for coverage of the 1992 Los Angeles Riots and the 1994

Northridge Earthquake. He has worked with some of the nation's leading non-profit organizations including the Southern Poverty Law Center, The James Irvine Foundation, Teaching Tolerance and the Food & Environment Reporting Network. His work has appeared in galleries around the world, including the California Museum of Photography, Oakland Museum of California, and the Newseum in Washington, DC.

2. Upon information and belief, defendant Tom Garrett ("Garrett") is a resident of Virginia with a principal place of business in the District of Columbia. Upon information and belief, Garrett was a principal of and the person ultimately responsible for the actions of defendant Tom Garrett for Congress.

3. Upon information and belief, defendant Tom Garrett for Congress ("the Committee") is or was a duly constituted political committee with a principal place of business in the District of Columbia.

#### JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1338. This is an action for copyright infringement under the United States Copyright Act. Venue in this district is proper pursuant to 28 U.S.C. §§1391(b) and 1400.

#### UNDERLYING FACTS

5. Among other subjects, Bigelow has created numerous acclaimed photographs of persons seeking to gain entry into the United States, including by climbing a (previously constructed) wall on the border between the United States and Mexico. The Photo at issue in this case is one of those photographs. In 2015 the United States Copyright Office duly issued a Certificate of Copyright Registration -- No. VA 1-964-979 -- establishing the registered copyright status of the Photo.

6. During his 2016 campaign for Congress, Garrett -- at least in part through the Committee -- helped himself to the Photo and essentially made it the trademark of that campaign, using it for numerous purposes including fundraising. One example of such use is set forth here:

ress.com/latest-terror-attacks-are-evidence-of-dhs-inability-to-vet-refugees/

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# Latest Terror Attacks Are Evidence of DHS' Inability to Vet Refugees

September 21, 2016



**Tom Garrett's "E.N.D. Illegal Immigration" Plan**

**Erect Southern Border Wall | No Amnesty/Benefits | Defund Sanctuary Cities**

At no time was Bigelow asked for permission for the extensive use of the Photo by Garrett's campaign and at no time did he grant any such permission. In fact, in light of the uses to which the defendants put the Photo, Bigelow never would have granted any such permission.

7. Upon information and belief, the defendants have continued to use and display the Photo long after they were informed that such use was unauthorized and unlawful.

CAUSE OF ACTION FOR WILFUL COPYRIGHT INFRINGEMENT

8. Plaintiff incorporates here the contents of Paragraphs 1 through 7 above.

9. The unauthorized copying, display, and other exploitation of the Photo by the defendants constitute wilful infringements of the registered copyright in the Photo.

10. Among the damages sustained by Bigelow as a result of the defendants' rampant wilful infringements of the registered copyright in the Photo, by implying that Bigelow authorized those uses – which were and are anathema to him – defendants have impugned and damaged his reputation.

WHEREFORE, plaintiff demands judgment a) awarding to him defendants' profits attributable to the infringements, plaintiff's damages, and/or statutory damages, pursuant to 17 U.S.C. §504; b) awarding to plaintiff his costs and attorneys' fees, pursuant to 17 U.S.C. §505; c) awarding to plaintiff punitive damages; and d) awarding such other relief as the Court deems just.

Dated: September 26, 2017

NORWICK & SCHAD

By: 

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